

IN THE SUPREME COURT OF THE STATE OF UTAH

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FILED
UTAH APPELLATE COURTS

NOV 20 2014

Proposed Amendments to
Rules 1, 4, 19, 25, 47 & 48 of
the Utah Rules of Appellate Procedure

Case No. 20141041-SC


ORDER

IT IS HEREBY ORDERED that the proposed amendments to Rules 1, 4, 19, 25, 47, and 48 of the Utah Rules of Appellate Procedure are adopted as submitted and promulgated effective May 1, 2015.

FOR THE COURT:

Date

11-20-14

A handwritten signature in black ink, appearing to read 'MBD', is written over a horizontal line.

Matthew B. Durrant
Chief Justice

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

November 5, 2014

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

The Honorable Matthew B. Durrant
Chief Justice, Utah Supreme Court
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Dear Chief Justice Durrant:

The Advisory Committee on the Rules of Appellate Procedure recommends that the Supreme Court amend rules 1, 4, 19, 25, 47 and 48 of the Utah Rules of Appellate Procedure. I have explained each proposed amendment below, including public comments and specific recommendations made by the committee.

Rule 1. Scope of rules.

The proposed amendment to rule 1 clarifies that the "trial court" is the court whose ruling is under review. The proposal also makes clear which appellate rules apply in child welfare proceedings.

The proposal received no public comments. Upon expiration of the public comment period, the committee reviewed the proposal and voted to recommend the proposal, as amended, to the Supreme Court.

Rule 4. Appeal as of right: when taken.

The proposal to amend rule 4 clarifies the process for filing a motion for extension of time to file a notice of appeal based on good cause or based on good cause and excusable neglect.

The proposal received no public comments. Upon expiration of the public comment period, the committee reviewed the proposal and voted to recommend the proposal, as amended, to the Supreme Court.

Rule 19. Extraordinary writs.

The proposed amendment to rule 19 changes references to rule 8A to rule 23C in line with the renumbering rule 8A to rule 23C that became effective November 1, 2014.

The mission of the Utah Judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

The proposal received no public comments. Upon expiration of the public comment period, the committee voted to recommend the proposal, as written, to the Supreme Court.

Rule 25. Brief of an amicus curiae or guardian ad litem.

The proposal to amend rule 25 provides that the deadline for filing a motion for leave to file a brief of an amicus curiae or guardian ad litem does not apply when the motion is filed under rule 50(f). The proposed amendment also makes minor technical changes.

The proposal received no public comments. Upon expiration of the public comment period, the committee reviewed the proposal and voted to recommend it, as written, to the Supreme Court.

Rule 47. Certification and transmission of record; joint and separate petitions; cross-petitions; parties.

The proposal to amend rule 47 renames the rule. The proposed amendment also removes the requirement for certification of the record. Finally, the proposal provides that the Clerk of the Supreme Court shall notify the Clerk of the Court of Appeals to transmit the record on appeal to the Supreme Court when a petition for writ of certiorari has been granted.

The proposal received no public comments. Upon expiration of the public comment period, the committee voted to recommend the proposal, as written, to the Supreme Court.


Rule 48. Time for petitioning.

The proposal to amend rule 48 clarifies the process for filing a motion for extension of time for filing a petition for writ of certiorari based on either good cause or good cause or excusable neglect.

The proposal received no public comments. Upon expiration of the public comment period, the committee voted to recommend the proposal, as written, to the Supreme Court.

I have scheduled time on your agenda for November 12, 2014, and I look forward to presenting these proposals.

Sincerely,

A handwritten signature in black ink, appearing to read "Joan Watt", written in a cursive style.

Joan Watt
Committee Chair

The Honorable Matthew B. Durrant
November 5, 2014
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Encl. Rule 1. Scope of rules.
 Rule 4. Appeal as of right: when taken.
 Rule 19. Extraordinary writs.
 Rule 25. Brief of an amicus curiae or guardian ad litem.
 Rule 47. Certification and transmission of record; joint and separate
 petitions; cross-petitions; parties.
 Rule 48. Time for petitioning.

1 **Rule 1. Scope of rules.**

2 (a) Applicability of rules. These rules govern the procedure before the
3 Supreme Court and the Court of Appeals of Utah in all cases. Applicability of
4 these rules to the review of decisions or orders of administrative agencies is
5 governed by Rule 18. When these rules provide for a motion or application to
6 be made in a trial court or an administrative agency, commission, or board,
7 the procedure for making such motion or application shall be governed by the
8 Utah Rules of Civil Procedure, Utah Rules of Criminal Procedure, and the
9 rules of practice of the trial court, administrative agency, commission, or
10 board.

11 (b) Reference to "court." Except as provided in Rule 43, when these rules
12 refer to a decision or action by the court, the reference shall include a panel of
13 the court. The term "trial court" means the court or administrative agency,
14 commission, or board from which the appeal is taken or whose ruling is under
15 review. The term "appellate court" means the court to which the appeal is
16 taken.

17 (c) Procedure established by statute. If a procedure is provided by state
18 statute as to the appeal or review of an order of an administrative agency,
19 commission, board, or officer of the state which is inconsistent with one or
20 more of these rules, the statute shall govern. In other respects, these rules
21 shall apply to such appeals or reviews.

22 (d) Rules not to affect jurisdiction. These rules shall not be construed to
23 extend or limit the jurisdiction of the Supreme Court or Court of Appeals as
24 established by law.

25 (e) Title. These rules shall be known as the Utah Rules of Appellate
26 Procedure and abbreviated Utah R. App. P.

27 (f) Rules for appeals in child welfare proceedings. Appeals taken from
28 juvenile court orders related to abuse, neglect, dependency, termination, and
29 adoption proceedings are governed by ~~Title VIII, Rules 52 through 59~~, except
30 for orders related to substantiation proceedings under Section 78-3a-320.
31 Rules 9, ~~40~~ and 23B do not apply; Due to the summary nature of child
32 welfare appeals, Rule 10(a)(2)(A) does not apply. ~~but the o~~Other appellate
33 rules apply if not inconsistent with Rules 52 through 59.

Rule 4. Appeal as of right: when taken.

(a) Appeal from final judgment and order. In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. However, when a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(b) Time for appeal extended by certain motions.

(b)(1) If a party timely files in the trial court any of the following motions, the time for all parties to appeal from the judgment runs from the entry of the order disposing of the motion:

(b)(1)(A) A motion for judgment under Rule 50(b) of the Utah Rules of Civil Procedure;

(b)(1)(B) A motion to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, under Rule 52(b) of the Utah Rules of Civil Procedure;

(b)(1)(C) A motion to alter or amend the judgment under Rule 59 of the Utah Rules of Civil Procedure;

(b)(1)(D) A motion for a new trial under Rule 59 of the Utah Rules of Civil Procedure; or

(b)(1)(E) A motion for a new trial under Rule 24 of the Utah Rules of Criminal Procedure.

(b)(2) A notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any motion listed in Rule 4(b), shall be treated as filed after entry of the order and on the day thereof, except that

28 such a notice of appeal is effective to appeal only from the underlying
29 judgment. To appeal from a final order disposing of any motion listed in Rule
30 4(b), a party must file a notice of appeal or an amended notice of appeal
31 within the prescribed time measured from the entry of the order.

32 (c) Filing prior to entry of judgment or order. A notice of appeal filed after
33 the announcement of a decision, judgment, or order but before entry of the
34 judgment or order shall be treated as filed after such entry and on the day
35 thereof.

36 (d) Additional or cross-appeal. If a timely notice of appeal is filed by a party,
37 any other party may file a notice of appeal within 14 days after the date on
38 which the first notice of appeal is docketed in the court in which it was filed, or
39 within the time otherwise prescribed by paragraphs (a) and (b) of this rule,
40 whichever period last expires.

41 (e) Motion for Extension of time to appeal.

42 (e)(1) The trial court, upon a showing of good cause, may extend the time
43 for filing a notice of appeal upon motion filed before the expiration of the time
44 prescribed by paragraphs (a) and (b) of this rule. Responses to such motions
45 for an extension of time are disfavored and the court may rule at any time
46 after the filing of the motion. No extension shall exceed 30 days beyond the
47 prescribed time or 14 days beyond the date of entry of the order granting the
48 motion, whichever occurs later.

49 (e)(2) The trial court, upon a showing of good cause or excusable neglect
50 or good cause, may extend the time for filing a notice of appeal upon motion
51 filed not later than 30 days after the expiration of the time prescribed by
52 paragraphs (a) and (b) of this rule. A motion filed before expiration of the
53 prescribed time may be ex parte unless the trial court otherwise requires.
54 Notice of a motion filed after expiration of the prescribed time shall be given to

~~the other parties in accordance with the rules of practice of the trial court. The~~
~~court may rule at any time after the filing of the motion. That a movant did not~~
~~file a notice of appeal to which paragraph (c) would apply is not relevant to the~~
~~determination of good cause or excusable neglect. No extension shall exceed~~
~~30 days past beyond the prescribed time or 140 days from beyond the date of~~
~~entry of the order granting the motion, whichever occurs later.~~

(f) Motion to reinstate period for filing a direct appeal in criminal cases.
Upon a showing that a criminal defendant was deprived of the right to appeal,
the trial court shall reinstate the thirty-day period for filing a direct appeal. A
defendant seeking such reinstatement shall file a written motion in the
sentencing court and serve the prosecuting entity. If the defendant is not
represented and is indigent, the court shall appoint counsel. The prosecutor
shall have 30 days after service of the motion to file a written response. If the
prosecutor opposes the motion, the trial court shall set a hearing at which the
parties may present evidence. If the trial court finds by a preponderance of the
evidence that the defendant has demonstrated that the defendant was
deprived of the right to appeal, it shall enter an order reinstating the time for
appeal. The defendant's notice of appeal must be filed with the clerk of the
trial court within 30 days after the date of entry of the order.

(g) Motion to reinstate period for filing a direct appeal in civil cases.

(g)(1) The trial court shall reinstate the thirty-day period for filing a direct
appeal if the trial court finds by a preponderance of the evidence that:

(g)(1)(A) The party seeking to appeal lacked actual notice of the entry of
judgment at a time that would have allowed the party to file a timely motion
under paragraph (e) of this rule;

(g)(1)(B) The party seeking to appeal exercised reasonable diligence in
monitoring the proceedings; and

82 (g)(1)(C) The party, if any, responsible for serving the judgment under
83 Rule 58A(d) of the Utah Rules of Civil Procedure did not promptly serve a
84 copy of the signed judgment on the party seeking to appeal.

85 (g)(2) A party seeking such reinstatement shall file a written motion in the
86 trial court within one year from the entry of judgment. The party shall comply
87 with Rule 7 of the Utah Rules of Civil Procedure and shall serve each of the
88 parties in accordance with Rule 5 of the Utah Rules of Civil Procedure.

89 (g)(3) If the trial court enters an order reinstating the time for filing a direct
90 appeal, a notice of appeal must be filed within 30 days after the date of entry
91 of the order.

92 **Advisory Committee Note**

93 ~~Subsection~~Paragraph (f) was adopted to implement the holding and
94 procedure outlined in Manning v. State, 2005 UT 61, 122 P.3d 628.

Rule 19. Extraordinary writs.

(a) Petition for extraordinary writ to a judge or agency; petition; service and filing. An application for an extraordinary writ referred to in Rule 65B, Utah Rules of Civil Procedure, directed to a judge, agency, person or entity shall be made by filing a petition with the clerk of the appellate court. Service of the petition shall be made on the respondent judge, agency, person, or entity and on all parties to the action or case in the trial court or agency. In the event of an original petition in the appellate court where no action is pending in the trial court or agency, the petition shall be served personally on the respondent judge, agency, person or entity and service shall be made by the most direct means available on all persons or associations whose interests might be substantially affected.

(b) Contents of petition and filing fee. A petition for an extraordinary writ shall contain the following:

(b)(1) A statement of all persons or associations, by name or by class, whose interests might be substantially affected;

(b)(2) A statement of the issues presented and of the relief sought;

(b)(3) A statement of the facts necessary to an understanding of the issues presented by the petition;

(b)(4) A statement of the reasons why no other plain, speedy, or adequate remedy exists and why the writ should issue;

(b)(5) Except in cases where the writ is directed to a district court, a statement explaining why it is impractical or inappropriate to file the petition for a writ in the district court;

(b)(6) Copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition;

27 (b)(7) A memorandum of points and authorities in support of the petition;
28 and

29 (b)(8) The prescribed filing fee, unless waived by the court.

30 (b)(9) Where emergency relief is sought, the petition must comply with
31 Rule 8A23C(b), including any additional requirements set forth by that
32 subpart.

33 (b)(10) Where the subject of the petition is an interlocutory order, the
34 petition must state whether a petition for interlocutory appeal has been filed
35 and, if so, summarize its status or, if not, state why interlocutory appeal is not
36 a plain, speedy or adequate remedy.

37 (c) Response to petition . The judge, agency, person, or entity and all
38 parties in the action other than the petitioner shall be deemed respondents for
39 all purposes. Two or more respondents may respond jointly. If any respondent
40 does not desire to appear in the proceedings, that respondent may advise the
41 clerk of the appellate court and all parties by letter, but the allegations of the
42 petition shall not thereby be deemed admitted. Where emergency relief is
43 sought, Rule 8A23C(d) shall apply. Otherwise, within seven days after service
44 of the petition, any respondent or any other party may file a response in
45 opposition or concurrence, which includes supporting authority.

46 (d) Review and disposition of petition. The court shall render a decision
47 based on the petition and any timely response, or it may require briefing or the
48 submission of further information, and may hold oral argument at its
49 discretion. If additional briefing is required, the briefs shall comply with Rules
50 24 and 27. Rule 8A23C(f) applies to requests for hearings in emergency
51 matters. With regard to emergency petitions submitted under Rule 8A23C,
52 and where consultation with other members of the court cannot be timely
53 obtained, a single judge or justice may grant or deny the petition, subject to

54 review by the court at the earliest possible time. With regard to all petitions, a
55 single judge or justice may deny the petition if it is frivolous on its face or fails
56 to materially comply with the requirements of this rule or Rule 65B, Utah Rules
57 of Civil Procedure. The denial of a petition by a single judge or justice may be
58 reviewed by the appellate court upon specific request filed within seven days
59 of notice of disposition, but such request shall not include any additional
60 argument or briefing.

61 (e) Transmission of record. In reviewing a petition for extraordinary writ, the
62 appellate court may order the record, or any relevant portion thereof, to be
63 transmitted.

64 (f) Number of copies. For a petition presented to the Supreme Court,
65 petitioner shall file with the clerk of the court an original and five copies of the
66 petition. For a petition pending in the Supreme Court, respondent shall file
67 with the clerk of the court an original and five copies of the response. For a
68 petition presented to the Court of Appeals, petitioner shall file with the clerk of
69 the court an original and four copies of the petition. For a petition pending in
70 the Court of Appeals, respondent shall file with the clerk of the court an
71 original and four copies of the response.

72 (g) Issuance of extraordinary writ by appellate court sua sponte. The
73 appellate court, in aid of its own jurisdiction in extraordinary cases, may issue
74 a writ of certiorari sua sponte directed to a judge, agency, person, or entity. A
75 copy of the writ shall be served on the named respondents in the manner and
76 by an individual authorized to accomplish personal service under Rule 4, Utah
77 Rules of Civil Procedure. In addition, copies of the writ shall be transmitted by
78 the clerk of the appellate court, by the most direct means available, to all
79 persons or associations whose interests might be substantially affected by the
80 writ. The respondent and the persons or associations whose interests are

81 substantially affected may, within four days of the issuance of the writ, petition
82 the court to dissolve or amend the writ. The petition shall be accompanied by
83 a concise statement of the reasons for dissolution or amendment of the writ.

Rule 25. Brief of an amicus curiae or guardian ad litem.

A brief of an amicus curiae or of a guardian ad litem representing a minor who is not a party to the appeal may be filed only by leave of court granted on motion or at the request of the court. The motion for leave may be accompanied by a proposed amicus brief, provided it complies with applicable rules and the number of copies specified by Rule 26(b) are submitted to the court. A motion for leave shall identify the interest of the ~~applicant~~movant and shall state the reasons why a brief of an amicus curiae or the guardian ad litem is desirable. Except for a motion for leave to participate in support of, or in opposition to, a petition for writ of certiorari filed pursuant to Rule 50(f), the motion for leave shall be filed at least ~~twenty-one~~21 days prior to the date on which the brief of the party whose position as to affirmance or reversal the amicus curiae or guardian ad litem will support is due, unless the court for cause shown otherwise orders. Parties to the proceeding may indicate their support for, or opposition to, the motion. Any response of a party to a motion for leave shall be filed within ~~seven~~7 days of service of the motion. If leave is granted, an amicus curiae or guardian ad litem shall file its brief within ~~seven~~7 days of the time allowed the party whose position the amicus curiae or guardian ad litem will support, unless the order granting leave otherwise indicates. The time for responsive briefs under Rule 26(a) shall run from the timely service of the amicus or guardian ad litem brief or from the timely service of the brief of the party whose position the amicus curiae or guardian ad litem supports, whichever is later. A motion of an amicus curiae or guardian ad litem to participate in the oral argument will be granted when circumstances warrant in the court's discretion.

Rule 47. ~~Certification and t~~Transmission of record; joint and separate petitions; cross-petitions; parties.

(a) Joint and separate petitions; cross-petitions. Parties interested jointly, severally, or otherwise in a decision may join in a petition for a writ of certiorari; any one or more of them may petition separately; or any two or more of them may join in a petition. When two or more cases are sought to be reviewed on certiorari and involve identical or closely related questions, it will suffice to file a single petition for a writ of certiorari covering all the cases. A cross-petition for writ of certiorari shall not be joined with any other filing.

(b) Parties. All parties to the proceeding in the Court of Appeals shall be deemed parties in the Supreme Court, unless the petitioner notifies the Clerk of the Supreme Court in writing of the petitioner's belief that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served on all parties to the proceeding below, and a party noted as no longer interested may remain a party by notifying the clerk, with service on the other parties, that the party has an interest in the petition.

~~(c) Motion for certification and t~~Transmission of record. ~~A party intending to file a petition for certiorari, prior to filing the petition or at any time prior to action by the Supreme Court on the petition, may file a motion for an order to have the Clerk of the Court of Appeals or the clerk of the trial court certify the record, or any part of it, and provide for its transmission to the Supreme Court. Motions to certify the record prior to action on the petition by the Supreme Court should rarely be made, only when the record is essential to the Supreme Court's proper understanding of the petition or the brief in opposition and such understanding cannot be derived from the contents of the petition or the brief in opposition, including the appendix. If a motion is appropriate, it shall be made to the Supreme Court after the filing of a petition but prior to~~

28 ~~action by the Supreme Court on the petition. In the case of a stay of execution~~
29 ~~of a judgment of the Court of Appeals, such a motion may be made before the~~
30 ~~filing of the petition. Thereafter, the Clerk of the Supreme Court or any party to~~
31 ~~the case may request that additional parts of the record be certified and~~
32 ~~transmitted to the Supreme Court. When a petition for writ of certiorari is~~
33 ~~granted, the Clerk of the Supreme Court shall notify the Clerk of the Court of~~
34 ~~Appeals to transmit the record on appeal to the Supreme Court.~~

Rule 48. Time for petitioning.

(a) Timeliness of petition. A petition for a writ of certiorari must be filed with the Clerk of the Supreme Court within 30 days after the entry of the final decision by the Court of Appeals. The docket fee shall be paid at the time of filing the petition.

(b) Refusal of petition. The clerk will refuse to receive any petition for a writ of certiorari which is beyond the time indicated in paragraph (a) of this rule or which is not accompanied by the docket fee.

(c) Effect of petition for rehearing. The time for filing a petition for a writ of certiorari runs from the date the decision is entered by the Court of Appeals, not from the date of the issuance of the remittitur. If a petition for rehearing that complies with Rule 35(a) is timely filed by any party, the time for filing the petition for a writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or of the entry of a subsequent decision entered upon the rehearing.

(d) Time for cross-petition.

(d)(1) A cross-petition for a writ of certiorari must be filed:

(d)(1)(A) within the time provided in Subdivisions (a) and (c) of this rule; or

(d)(1)(B) within 30 days of the filing of the petition for a writ of certiorari.

(d)(2) Any cross-petition timely only pursuant to paragraph (d)(1)(B) of this rule will not be granted unless a timely petition for a writ of certiorari of another party to the case is granted.

(d)(3) The docket fee shall be paid at the time of filing the cross-petition. The clerk shall refuse any cross-petition not accompanied by the docket fee.

(d)(4) A cross-petition for a writ of certiorari may not be joined with any other filing. The clerk of the court shall refuse any filing so joined.

(e) Extension of time.

28 (e)(1) The Supreme Court, upon a showing of good cause, may extend the
29 time for filing a petition or a cross-petition for a writ of certiorari upon motion
30 filed not later than 30 days after the expiration of the time prescribed by
31 paragraph (a) or (c) of this rule. Responses to such motions are disfavored
32 and the court may rule at any time after the filing of the motion. No extension
33 shall exceed 30 days past the prescribed time or 14 days from the date of
34 entry of the order granting the motion, whichever occurs later, and no more
35 than one extension will be granted.

36 (e)(2) The Supreme Court, upon a showing of good cause or excusable
37 neglect or ~~good cause~~, may extend the time for filing a petition or a cross-
38 petition for a writ of certiorari upon motion filed not later than 30 days after the
39 expiration of the time prescribed by paragraph (a) or (c) of this rule, whichever
40 is applicable. ~~Any such motion which is filed before expiration of the~~
41 ~~prescribed time may be ex parte, unless the Supreme Court otherwise~~
42 ~~requires. Notice of any such motion which is filed after expiration of the~~
43 ~~prescribed time shall be given to the other parties. No extension shall exceed~~
44 30 days past the prescribed time or 140 days from the date of entry of the
45 order granting the motion, whichever occurs later, and no more than one
46 extension will be granted.

47 (f) Seven copies of the petition for a writ of certiorari, one of which shall
48 contain an original signature, shall be filed with the Clerk of the Supreme
49 Court.